

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Automatic and Manual Roaming
Obligations Pertaining to
Commercial Mobile
Radio Services

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) WT Docket No. 00-193
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To: The Commission

COMMENTS OF PACIFIC WIRELESS TECHNOLOGIES, INC.

Pacific Wireless Technologies, Inc. ("Pacific"), pursuant to the provisions of section 1.415 of the rules and regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.415 (2000), hereby submits its comments responsive to the *Notice of Proposed Rule Making* ("Notice")¹ in the above-captioned proceeding. For the reasons set forth more fully below, Pacific urges the Commission to adopt regulations and policies mandating automatic roaming arrangements on a non-discriminatory basis, at least for certain segments of the commercial mobile radio service ("CMRS") industry.

I. Background.

Formed in late-1999, Pacific is new entrant in the commercial mobile radio service ("CMRS"). Pacific provides 800 MHz Specialized Mobile Radio ("SMR") two-way mobile telephony, data, and dispatch services using Motorola's digital iDEN technology. Pacific is the third iDEN carrier in the United States. Pacific serves approximately 15,000 customers, with a current

¹ *Notice of Proposed Rule Making*, WT Docket No. 00-193, FCC 00-361, rel. Nov. 1, 2000.

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coverage area covering most of northern and southern California's coastal areas (from Santa Rosa to Santa Barbara), as well as California's central valley (from Bakersfield to Redding).

Pacific has no automatic roaming arrangements with any carrier, but is currently negotiating with Southern Communications Services, Inc. ("Southern") for such an arrangement, and expects to conclude a roaming agreement soon. Pacific has been unable to negotiate a roaming arrangement with the United States' largest iDEN carrier, Nextel Communications, Inc. ("Nextel"), despite the fact that Pacific is willing and anxious to initiate any technical and business discussions necessary to facilitate such arrangements. Nextel, according to the FCC, "dominates" digital 800 MHz SMR service offerings. *Notice* at ¶ 11.

Based on the foregoing, Pacific's comments are limited to the SMR service, where unique market conditions exist.² In the SMR service, one large nationwide carrier may have incentives to act in an anti-competitive manner by refusing to serve end users whose handsets are, with little or no modification, technically capable of functioning on its system. Accordingly, Pacific is pleased to submit these comments.

II. Discussion.

A. *Manual Roaming In The SMR Service Does Not Exist Today.*

The *Notice* notes that the FCC's rules currently require certain "covered" CMRS carriers to offer manual roaming. *Notice* at ¶ 5. However, Nextel has refused Pacific's request to make the arrangements necessary to provide manual roaming services to Pacific's customers when they are outside of Pacific's existing coverage area. Worse still, Pacific's customers cannot routinely make

² The SMR industry is unlike certain other segments of the CMRS market in that: (i) there exists one predominant digital equipment supplier (Motorola) at this time; (ii) the service is spectrum-constrained for new entrants-recent auctions only enabled Nextel to consolidate its existing holdings; and (iii) there is only one currently predominant technical standard - Motorola's iDEN platform. Similarly, the SMR industry was generally not considered a common carrier industry until August 1996; thus, concepts such as roaming and resale are relatively new, and not well established among carriers.

emergency ("911") calls on Nextel's system, nor can Nextel's customers make arrangements with Pacific so that those customers can make 911 calls on Pacific's system.³ Pacific does not seek redress for Nextel's actions in this proceeding, but merely offers these examples to demonstrate that the FCC's current policies are not producing the results desired by the Commission. Thus, any new policies the FCC adopts in this proceeding should be strictly enforced lest they be rendered meaningless by noncompliance. Pacific also believes that these examples illustrate certain irrational and anti-competitive actions the FCC should seek to prospectively eliminate with its roaming policies.

The Commission should also recognize the limitations of manual roaming. The initiation of a manual roaming mobile telephone call is a last-resort communications system, regularly employed by perhaps only a handful of CMRS end users. The CMRS market has clearly moved to seamless roaming on a nationwide basis; end users simply do not desire time consuming call set-up and payment procedures. Thus, the *theoretical* availability of manual roaming based on the FCC's current regulations should not impede the FCC's promotion of automatic roaming where it appears that market forces have acted to inhibit roaming.

B. *The Commission Should Mandate Automatic Roaming for SMR iDEN Carriers.*

The *Notice* seeks comment on the current availability of automatic roaming. *Notice* at ¶ 17. In the SMR service, Nextel has rejected the efforts of Pacific to establish any form of roaming, whether *automatic* or *manual*, 911-related or routine. This factual assertion is supported by the sworn declaration of Jeffery Fuller of Pacific, attached hereto as **Exhibit A**. Nextel's refusal to permit any

³ Provision of 911-dialing services to non-subscribers, as required by the FCC's rules, is the functional equivalent of a roaming service that is limited to a certain type of call. Thus, Pacific believes that any carrier that is capable of offering 911-dialing services to non-subscribers should also be technically capable of offering those same non-subscribers access on a non-emergency basis.

use of its iDEN system as a “host” system for Pacific’s end users harms those customers in several ways:

- Pacific’s customers cannot make emergency calls outside Pacific’s existing coverage area - despite the FCC’s clear mandate;
- Pacific’s customers cannot contact Nextel and arrange for manual roaming on a for-hire basis - despite the FCC’s clear mandate; and
- Pacific’s customers purchased a mobile telephone that is technically capable of being used throughout the United States, but is inoperable outside Pacific’s coverage area.⁴ If these customers are familiar with any other CMRS service, this situation will confound them. These customers may inadvertently rely on their mobile telephones outside Pacific’s service area, only to be greatly disappointed.

Nextel’s actions also harm the SMR industry’s status as a competitor to cellular and personal communications services (“PCS”) generally. The SMR industry, admittedly thanks mostly to Nextel, has become a viable alternative to cellular and PCS. However, unless all SMR end users are permitted to roam anywhere their handsets will function, the SMR service will remain less functional and attractive to consumers. The public interest is best served by maintaining the SMR service as a true competitor to PCS and cellular in every respect.

Pacific believes that Nextel’s actions are unreasonable and discriminatory. As an initial matter, Nextel’s actions are unreasonable because Nextel is a common carrier and the end users in question have compatible mobile telephone equipment and are willing to pay for the roaming services in question. Roaming, it should be noted, is not based on novel concepts. Instead, the basis for roaming is located in Title II of the Communications Act of 1934, as amended (“Act”). In

⁴ There are also areas of California served by Pacific, but appear not to be currently served by Nextel. Thus, Nextel may also be harming its own customers by refusing to enter into roaming arrangements.

particular, Section 201 of the Act⁵ requires common carriers such as Nextel to furnish communications service upon request - a common carrier cannot simply decline this obligation.

Further, at least insofar as Pacific is able to determine, there is no technical basis for Nextel's actions.⁶ Nextel has roaming relationships with other iDEN carriers, so roaming cannot be impossible from a technical standpoint. Instead, Nextel irrationally appears to be foregoing roamer revenue, solely for the purpose of limiting Pacific's growth as a facilities-based competitor.⁷ While competition should certainly be encouraged by the FCC, that competition should be to *serve* the end user, *not to deny or delay service* solely to harm the end user's home service provider. In similar contexts, the FCC finds such conduct unreasonable.⁸

Further, Nextel's arrangements are discriminatory because Nextel is offering seamless roaming to, among others, Clearnet Communications of Canada.. See www.clearnet.com ("Our partnership with Nextel gives you the freedom to roam in more than 400 US cities at no additional

⁵ See 47 U.S.C. § 201(a) ("It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor").

⁶ Pacific is mindful that there are technical issues that must be addressed in order to implement roaming in the most useful fashion possible. The FCC should not countenance Nextel's likely characterization of those issues as obstacles.

⁷ The FCC has been concerned in the past with the concept that roaming, especially "in-market" roaming, discourages build-out of competitive networks. *Notice* at ¶ 27. However, that is not the case with Pacific, which has already largely completed its iDEN system. Pacific only has a small portion of its planned system that requires further build-out.

⁸ For example, the FCC has found that one key to local competition are the ministerial processing functions that incumbent local exchange carriers ("ILEC") performs when they assist a customer in its migration to a competing local exchange carrier ("CLEC"). These functions, similar to roaming, involve situations where the carriers involved ordinarily have no incentive to cooperate. However, the public interest dictates that the FCC consider the end user's needs paramount, and require the carriers to cooperate. See *GTE Corporation*, FCC 00-221, rel. June 16, 2000, ¶¶ 281-297 (noting the importance of ILEC's cooperation in processing functions to enable local telephone competition).

charge and with no registration fee.”).⁹ Further, Nextel has entered into numerous other roaming arrangements, as evidenced by the availability of Nextel’s service on GSM systems in Europe and other countries. Thus, unless the FCC takes action, Canadian end users of iDEN systems, as well as iDEN or GSM users from a host of countries, will be permitted to roam on Nextel’s system, but no domestic end users will have the same opportunities - a result completely at odds with the statutory goals of the Act to ensure widespread use - “so far as possible” - of communications networks throughout the United States. 47 U.S.C. § 151.

Based on its current relationships, Nextel clearly realizes the benefits associated with roaming. Nextel, however, apparently only refuses to enter into roaming arrangements with one class of entity - domestic iDEN competitors, such as Pacific and Southern, that are not affiliated with Nextel. This type of behavior clearly contradicts the requirements imposed upon Nextel by the Act. See 47 U.S.C. § 202(a) (“It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communications service, directly or indirectly, by any means or device.”). Therefore, a non-discrimination alternative to a roaming requirement, such as the one proposed by the FCC, *Notice* at ¶ 21, would merely be a reiteration of the Act’s requirements; the FCC should instead mandate automatic roaming, at least in the case of iDEN SMR carriers, where evidence has been presented that roaming is not occurring in the manner contemplated by the FCC.

The *Notice* asks whether carriers with nationwide or geographically extensive service areas have an incentive to deny roaming arrangements to “their local or regional competitors.” *Notice* at ¶ 19. Pacific believes that this incentive is illustrated by Pacific’s experience with Nextel. However,

⁹ Nextel also offers automatic roaming services to its affiliate, Nextel Partners. See www.nextelpartners.com (“Our systems are operationally seamless with those of Nextel, enabling customers of both companies to roam on each other’s portion of the Nextel digital mobile network.”). Pacific certainly does not object to the provision of roamer service to affiliates. Pacific is only concerned with the denial of roaming services, or discriminatory treatment.

the FCC need not draw conclusions related to the CMRS industry generally from Nextel's behavior; as noted above, the SMR service is likely unique compared to other CMRS radio services.

C. *Roaming Regulations Should Not Sunset.*

The *Notice* questions whether the FCC's manual roaming requirement, and an automatic roaming requirement, if adopted, should sunset at a future date. *Notice* at ¶ 32. The Commission should again, as noted above, view the SMR industry in a different context because the rationale for the FCC's proposed sunset provision was that, at some future date:

[A] carrier would not have either the incentive or the ability to unreasonably deny manual roaming to an individual subscriber, or to unreasonably refuse to enter into an automatic roaming agreement with another CMRS provider, because some other carrier in its service area would be willing to do so.

Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, 11 FCC Rcd 9462, ¶ 32 (1996). This rationale does not apply to the SMR industry because there is only one carrier that dominates the service and that carrier is not permitting roaming of any type - manual or automatic. The proof is self-evident; there is no carrier other than Nextel in the SMR service that has the "ability," much less the "incentive," to permit roaming. Further, as demonstrated above, Nextel's denial of roaming is not based on technical issues, but is instead apparently aimed at preventing facilities-based competition in the domestic iDEN market.

Even if there were multiple carriers in the SMR service¹⁰ willing to make roaming available to others (which there are not), the roaming regulations for SMR carriers should not sunset in any case. As noted above, an end user's desire to receive roaming service is simply an expression of that end user's reasonable request to receive communications service from a common carrier. Section 201 of the Act requires the provision of such service. Further, the FCC only two-and-a-half years ago

¹⁰ Pacific is not aware of any PCS or cellular equipment or software that would currently enable Pacific's iDEN customers to roam on PCS or cellular networks. Even if such an advance were

stated that it would continue to apply Section 201 of the Act to CMRS providers - even where the marketplace is competitive. *Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance For Broadband Personal Communications Services*, 13 FCC Rcd 16857, ¶¶ 17-31 (1998). Thus, the FCC should not overturn its 1998 decision and impliedly forbear from enforcing Section 201 of the Act by sunseting its current and future roaming regulations. Section 201, and the roaming concepts embodied therein, are bedrock common carrier principles found in the Act.

III. Conclusion.

WHEREFORE, THE FOREGOING PREMISES CONSIDERED, Pacific respectfully urges the Commission to adopt automatic roaming requirements for the SMR service. Pacific further urges the Commission to forego "sunset" of any of its roaming-related regulations.

Respectfully submitted,

PACIFIC WIRELESS TECHNOLOGIES, INC.

By: Jeffery Fuller / JHF
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January 5, 2001

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available, however, it would not serve Pacific's customers that already have purchased single-mode iDEN handsets.



Exhibit A

Declaration of Jeffery Fuller

1. My name is Jeffery Fuller. I am over eighteen years of age and competent to testify to the matters set forth herein.

2. I am the President of Pacific Wireless Technologies, Inc. ("Pacific"). I have been actively involved in Pacific's efforts to secure roaming and 911 calling arrangements with Nextel Communications, Inc. ("Nextel")

3. I have read the attached Comments of Pacific Wireless Technologies, Inc. and affirm the factual assertions contained therein.

4. Nextel has informed me that it does not desire to enter into any form of roaming arrangement, manual or automatic, with Pacific. Further, Nextel has not responded to Pacific's inquiries related to 911 compliance issues related to end users.

5. Pacific has tried in earnest to establish roaming and 911 arrangements with Nextel, but has been rebuffed.

I declare, under penalty of perjury, that the foregoing is true and correct. 47 C.F.R. § 1.16 (2000).

A handwritten signature in black ink, appearing to read "Jeffery Fuller", is written over a horizontal line. Below the signature, the name "Jeffery Fuller" is printed in a small, sans-serif font.

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